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In the Supreme Court of the United States

OCTOBER TERM, 1989

JULIA A. LUCAS, PETITIONER

v.

SAMUEL K. SKINNER, SECRETARY,
DEPARTMENT OF TRANSPORTATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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10 pp

QUESTION PRESENTED

Whether the court of appeals erred in upholding the district court's finding that the Federal Aviation Administration did not discriminate against petitioner on the basis of race.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1c-8c) is reported at 879 F.2d at 1240. The opinion of the district court (Pet. App. 1b-6b) is not yet reported. The first opinion of the court of appeals (Pet. 1a-6a) is reported at 835 F.2d 532 (*Lucas I*).

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1989. On November 13, 1989, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including December 21, 1989, and the petition for a writ of certiorari was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

STATEMENT

1. Petitioner, who is white, alleges that her employer, the Federal Aviation Administration, discriminated against her on the basis of race when it promoted Rosa Wright, a black woman, to the position of Quality Assurance Training Specialist (QATS). Pet. App. 1c. Lucas and Wright were among the nineteen people who applied for two QATS positions at the Flight Service Station in Leesburg, Virginia. Pet. App. 2a. Two local managers selected four finalists on the basis of personal interviews. The top four scorers were three black females, including Ms. Wright, and a white male. Ms. Lucas scored in the bottom third among the interviewees, and those ranked above her included blacks, whites and Hispanics. *Ibid.* The manager of the facility made the final selections of Ms. Wright and Sharon Hall,[1] both black women. *Ibid.* Petitioner contends that Ms. Wright was unqualified for the QATS position because she lacked a Pilot Weather Briefing (PWB) certificate, which was required for the QATS job. *Ibid.*

2. Petitioner filed suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, alleging that the FAA discriminated against her because of her race when it selected for promotion a black employee who lacked an objective qualification for the position (the PWB Certificate). Pet. 2. Following petitioner's presentation of her evidence at trial, the district court granted the government's motion to dismiss, finding that petitioner had not established a *prima facie* case of discrimination. Pet. App. 2c. On appeal, the Fourth Circuit reversed and remanded for trial, holding that petitioner had established a *prima facie* case of racial discrimination.[2] Pet. App. 1a-6a. On remand the govern-

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[1] Petitioner does not challenge the selection of Ms. Hall.

[2] The court held that petitioner's *prima facie* case consisted of evidence of (1) the promotion of an unqualified black (Wright); (2)

ment presented its evidence of a "legitimate non-discriminatory reason" for its action and petitioner presented rebuttal evidence to demonstrate pretext. Pet. App. 5b. The district court decided that the FAA had justified the selection of Ms. Wright on the basis of her superior "maturity and excellent communication skills, which are important for success in a teaching position." *Ibid.* The court also found that, notwithstanding her lack of a PWB certificate at the time of her application, Ms. Wright was "technically fully qualified" to assume the responsibilities of the QATS position. Pet. App. 4b-5b. It concluded that petitioner had failed to demonstrate that the FAA's legitimate non-discriminatory reasons for its hiring decision were pretextual. Pet. App. 5b.

3. On appeal, the court of appeals concluded, first, that the district court clearly erred in its findings that the PWB Certificate is not a requirement for selection to the QATS job and that Ms. Wright was therefore fully qualified even though she lacked the certificate. Pet. App. 4c.[3] Never-

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irregular acts of favoritism toward Wright; (3) the questionable use of a subjective interviewing process; and (4) the opinion testimony of other employees that race was a factor. Pet. App. 5a-6a.

[3] Petitioner alleged in her complaint that possession of a current PWB Certificate was a prerequisite to selection for the QATS position. The FAA admitted this in its answer. Pet. App. 4c. Petitioner presented evidence at the first trial that Ms. Wright did not have a current PWB Certificate at the time of her selection. Pet. App. 2c. She was recertified with regard to the PWB Certificate within 60 days of her selection for the QATS position. Pet. App. 4b. Following the remand, the government introduced testimony from a FAA personnel staffing specialist that possession of a current PWB Certificate was not a requirement for the QATS position. Pet. App. 2c-3c. The district court then concluded that the PWB Certificate was not a requirement for selection to the QATS job. Pet. App. 2b. The court of appeals held that this finding was clear error because it contravened a fact admitted "and therefore resolved" by the FAA in its answer to the complaint. Pet. App. 4c-6c.

theless, after reviewing all the evidence presented below, the court affirmed the judgment in favor of the FAA. Pet. App. 7c. "In light of all the evidence," it concurred in the district court's finding that "[p]laintiff's nonselection for the QATS position was not based upon prohibited discrimination on the basis of her race," and concluded that "this factual finding cannot be said to be clearly erroneous." Pet. App. 8c.

ARGUMENT

The court of appeals correctly applied well-settled legal standards to the specific facts of this case. Accordingly, this case does not warrant further review.

1. Petitioner contends that certiorari should be granted to consider "whether the plaintiff must prevail if the court refuses to credit the reasons advanced by the defendant during his rebuttal." Pet. 5. Petitioner observes that "the court of appeals rejected outright one of the district court's factual findings (that the PWB certificate was not required), and declined to rest its affirmance on the district court's other two factual findings (*i.e.*, that the selectee was fully qualified and that petitioner had a 'confrontative' personality)." Pet. 6-7. According to petitioner, the court of appeals thereby refused to affirm *any* of the district court's findings of fact regarding the FAA's proffered reasons for its hiring decision for the QATS position. It was therefore required to find petitioner's *prima facie* case unrebutted and enter judgment in her favor. Pet. 7.

Petitioner's description of the court of appeals' decision is inaccurate. This case does not present the question whether a plaintiff must prevail if a reviewing court refuses to credit *any* of the reasons advanced by the defendant for its hiring decision. The court of appeals concluded that *one* key finding of fact by the district court was clearly erroneous—the finding that, because a PWB certificate is

not a requirement for selection to the QATS position, Ms. Wright was fully qualified. Pet. App. 4c. The court of appeals did *not* reject the other findings of the district court with regard to the FAA's nondiscriminatory reasons for hiring Wright over petitioner.[4] In addition, the court analyzed the evidence in the record that was presented by petitioner to support her allegation of discriminatory animus, and the rebuttal testimony presented by the FAA (Pet. App. 7c), and concluded that petitioner had failed to carry her burden of demonstrating that the FAA's actions were racially motivated. See *Texas Dep't of Community Affairs* v. *Burdine*, 450 U.S. 248, 253 (1981). Pet. App. 7c. It held, "[i]n light of all this evidence," that the district court's finding of non-discrimination was not clearly erroneous. Pet. App. 8c. Since reversal of a district court's findings is permissible only if the reviewing court is left with a "definite and firm conviction" that a mistake has occurred in light of the record taken as a whole, the court of appeals was correct and there is no basis for this Court to review this matter further. See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948); *Anderson* v. *City of Bessemer*

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[4] The district court found that the FAA had articulated a legitimate, nondiscriminatory reason for selecting Ms. Wright because she was: "technically fully qualified to assume the responsibilities of the QATS position. In addition, Ms. Wright possessed maturity and excellent communication skills, which are important for success in a teaching position. Ms. Lucas, on the other hand, had a confrontative personality, which would not be desirable in a position requiring the ability to relate well with others." Pet. App. 5b. Although the court of appeals stated that it was "somewhat concerned about the strength of the evidence" supporting these conclusions, and invalidated the district court's determination that Wright was fully qualified, it accepted the other findings of the district court and relied on them in "affirm[ing] the judgment in favor of the FAA." Pet. App. 7c.

City, 470 U.S. 564, 574 (1985) (trial court's findings must be upheld if those findings are plausible in light of the "record viewed in its entirety").

2. Petitioner also contends that review by this Court is warranted because the court of appeals erroneously imposed on petitioner the burden of producing "direct" evidence of discriminatory motive. Pet. 7-8. This assertion has no merit. The court of appeals correctly held that petitioner had the burden of demonstrating that the FAA's actions were racially motivated (Pet. App. 7c). She therefore had the ultimate burden to prove by a preponderance of the evidence that the legitimate reasons for not hiring her that were offered by the defendant were merely a pretext for discrimination. See, *e.g.*, *United States Postal Serv. Bd. of Governors* v. *Aikens*, 460 U.S. 711, 716 (1983); *Texas Dep't of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981); *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973). However, the court of appeals never held that petitioner could sustain her burden only by introducing direct evidence of discriminatory animus, nor did it conclude that she failed to sustain her burden solely because the evidence she did supply was "indirect." Rather, petitioner *chose* to present direct evidence of discriminatory motivation to rebut the FAA's testimony that no such motivation existed. In concluding that petitioner had failed to demonstrate "that the employer's proffered explanation is unworthy of credence," *Burdine*, 450 U.S. at 256 (see Pet. App. 5b), the district court properly weighed "the FAA's evidence on the issue of racial motivation," against petitioner's "evidence on this issue," and found the former more credible. See Pet. App. 7c; Pet. 7; see also *Aikens*, 460 U.S. at 716 (the court "must decide which party's explanation of the employer's motivation it believes"). In holding that the district court's finding of non-discrimination was not clearly erroneous, the court of appeals accordingly reviewed the testimony relied on by

the district court in making its finding that petitioner had failed to prove pretext—that is, the "direct" testimony of discriminatory motive offered by petitioner's witnesses and the testimony on discriminatory motive offered by the FAA's witnesses. In so doing, the court did not impermissibly demand "direct" evidence of discriminatory motive or improperly disregard petitioner's attempts to rebut pretext by other means. In sum, the court of appeals correctly concluded that "[i]n light of all this evidence," the district court did not clearly err in finding that petitioner's nonselection for the QATS position was not based upon prohibited racial discrimination.

CONCLUSION

The petition for a writ or certiorari should be denied.

Respectfully submitted.

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